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Monday, June 23, 2008

State vs. anarchy -- the false dichotomy

The false dichotomy between "state" (or "goverment") and "anarchy" can be highlighted every time someone tries to come up with a coherently stated definition of either of these supposed opposites. If we take, for example, Hans-Hermann Hoppe's definition literally, a federalist system of governments like the United States is not a "state" at all, nor are a wide variety of other political systems that have or could exist that could hardly be called "anarchies". Here's Hoppe:

> Let me begin with the definition of a state. What must an agent be able to do to qualify as a state? This agent must be able to insist that all conflicts among the inhabitants of a given territory be brought to him for ultimate decision-making or be subject to his final review. In particular, this agent must be able to insist that all conflicts involving himself be adjudicated by him or his agent. And implied in the power to exclude all others from acting as ultimate judge, as the second defining characteristic of a state, is the agent's power to tax: to unilaterally determine the price that justice seekers must pay for his services. [Source]

I'm not trying to pick on anarchists like Hoppe here. Statist political scientists and politicians also oversimplify the world of politics and law with this false dichotomy. This usually takes the form of observing that modern governments have feature X, and by two invalid steps of logic (that X is necessary for government and that without such government there is only lawless anarchy) concluding that anyplace lacking feature X would be a lawless anarchy. "Anarchy" is thus used as a boogyman to justify all sorts of brutality, waste, and other wrongs perpetrated by modern governments.

Let's start here:

> This agent must be able to insist that all conflicts among the inhabitants of a given territory be brought to him for ultimate decision-making or be subject to his final review

The United States federal government does not "insist that all conflicts among the inhabitants of a given territory be brought to [it] for ultimate decision-making", nor even that all disputes are "subject to [its] final review." Most disputes occur under State and local law, and the final arbiters of State law are State supreme courts. Only in the minority of cases where a dispute raises a question of federal law, or involves people from multiple states, do federal courts assert jurisdiction. Nor, of course, do States hold an all-encompassing monopoly of power -- many issues instead come under local or federal jurisdiction. Furthermore, federal, State, and local governments all have overlapping powers of taxation.

Now it might be argued that some provisions of federal law, for example in the Constitution, are so ambiguous as to effectively allow

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federal courts to assert jurisdiction whenever they strongly desire to do so. To the extent that there is merit in this argument, it only creates a conflict of interest because federal courts are able to judge the scope of their *own* power:

> In particular, this agent must be able to insist that all conflicts involving himself be adjudicated by him or his agent.

Hoppe indeed identifies a serious defect in modern constitutions -- they violate the ancient common law maxim that no one should be a judge in his own case. But this defect is readily cured without the kind of radical from-scratch destruction and reconstruction of law and politics that the term "anarchy" suggests. The reforms needed to cure this defect (described in more detail here) are (1) selecting judges by a method completely independent of the other political branches, so that in no real sense would judges and those in other branches that they judge be agents of the same entity, or one the agent of the other, and (2) by reform of jurisdiction, for example by changing who has jurisdiction over constitutional questions. If federal courts were not selected by Presidents and Senates whose power they then judge, and if federal courts reviewed disputes involving state constitutions, and a super-federal court reviewed disputes involving the federal Constitution, so that they did not have final say over the scope of their *own* power, conflicts of interest of the kind that Hoppe rightly criticizes in modern governments would no longer commonly arise.

What Hoppe is really arguing against can more accurately be called "sovereignty", the idea of one entity with a monopoly over all coercive powers in a territory, than "state" or "government." There are plenty of configurations of coercive power, in fact most such configurations over most of history, that do not involve this kind of sovereignty. In highlighting the problems of sovereignty I quite agree with him, but observe that the United States and many other historical and current polities are or were not "sovereign" in this sense, and many historical entities (such as the system of political property rights over most of English history) were not even close.

Those of us who would like to greatly reduce the brutal and wasteful powers of modern governments do ourselves a great disservice by adopting the statist term "anarchist." Anarchy is the boogyman of statists. A libertarian calling himself an "anarchist" is like an agnostic or atheist calling himself a "Satanist." Seek not for imaginary opposites, but for real alternatives.

Posted by Nick Szabo at 1:54 PM

3 comments:

Blode said...

Gee wiz, that's exactly what I've been arguing for quite a while, though rarely in print and never with any references to Hoppe (about whom I know little). Actually, starting this article I was thinking you'd go on for a few dozen paragraphs.

My essential argument has always been that anarchy forbids anyone from outlawing a tyrannical state. Put another way, anarchy says you can't force anyone to do anything, thus allowing everyone to do everything. I really see no reason why private armies wouldn't control everything under anarchy (as I define, which may admittedly be idiosyncratic).

But your way of describing things is more convincing. Though anarchists have undoubtedly produced good ideas, the term still seems like a misnomer in most cases ... the word "government" becomes distasteful to some folks so they hesitate to describe the type of organization they prefer as such. I can't stand the idea of enforcing contracts with my own hands (or paving the all the streets I use by myself), so I am not an anarchist. Simple as that.

8:30 PM

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nick said...

the word "government" becomes distasteful to some folks so they hesitate to describe the type of organization they prefer as such. I can't stand the idea of enforcing contracts with my own hands (or paving the all the streets I use by myself), so I am not an anarchist.

There is nothing wrong with private roads, for which there is ample historical precedent, but with enforce-it-yourself contracts you've put your fingers on one of the basic problems with anarcho-capitalism.

Most criticisms directed at "government" generally are criticisms of *modern* governemnts, the only kinds we know, and especially at the results of legislatures and regulatory bodies. We can't learn much about alternatives even from most history books, which tend to highly distort historical institutions through modern lenses (e.g. by treating kings as the hereditary equivalents of modern dictators. Most of the Western European kings, especially in the English legal tradition, were nothing of the sort, and treating medieval politics in this way misses the main unique feature of most of these systems, i.e. political property rights).

By playing along with the false all-or-nothing dichotomy of modern government vs. imaginary anarchy, anarchists ignore or distort the real workings of legal procedure and armed force. Anarchist just play devil's advocate and thereby help feed the beast they hate most.

10:42 AM

jb said...

I agree with you, though I have argued from a slightly different point. One of the major failings of communism was the belief that the governing body of the state was some how separate and above the economic pressures of a free market. I believe that anarcho-captilists make the same mistake and arrive at an opposite conclusion. Governments in fact derive from economic pressures. People band together and agree on sets of rules they believe will improve their happiness. This is in effect the free market trading certain liberties for protection/justice/fill-in-the-government-role.

Are there problems with current government? Yes. Is the government too big? I think so. Are there market failures that need to be addressed? Yes. However, claiming "no government" or "total government" does little to describe "what" is wrong, but creates a distinction that is not existant. Governments exist within a capitalist system, they respond to market pressures, they rise out of market pressures. Treating them as external is as ridiculous as claiming your cardiovascular system operates most efficiently without your hands and feet.

9:22 PM

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